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Addendum

Annex II

A draft relationship agreement between the Court and the United Nations

Discussion paper proposed by the Coordinator

Article 1[1]
Purpose of the Agreement

The present Agreement, which is entered into by the United Nations and the International Criminal Court ("the Court"), pursuant to the provisions of the Charter of the United Nations ("the Charter") and the Rome Statute of the International Criminal Court ("the Statute"), respectively, defines the terms on which the United Nations and the Court shall be brought into relationship.

Article 2
Principles

1. The United Nations recognizes the Court as an independent permanent judicial institution which, in accordance with articles 1 and 4 of the Statute, has international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

[1] The discussion paper does not include a text for the preamble. A revised text for the preamble will be provided at the next session of the Preparatory Commission.

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2. The Court recognizes the responsibilities of the United Nations under the Charter, in particular in the fields of international peace and security, economic, social, cultural and humanitarian development, in promoting and encouraging respect for human rights and for fundamental freedoms and, in conformity with the principles of justice and international law, the peaceful settlement of international disputes.[2]

3. The United Nations and the Court respect each other's status and mandate.

Article 3
Obligation of cooperation and coordination

The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute.

Article 4[3]
Cooperation between the Security Council of the United Nations and the Court

1. When the Security Council, acting under Chapter VII of the Charter of the United Nations, decides to refer to the Prosecutor of the Court ("the Prosecutor"), pursuant to article 13, paragraph (b), a situation in which one or more of the crimes referred to in article 5 of the Statute appears to have been committed, the Secretary-General of the United Nations ("the Secretary-General") shall immediately transmit the written decision of the Security Council to the Prosecutor together with documents and other materials that may be pertinent to the decision of the Council. Information provided by the Court to the Security Council in accordance with the Statute and the Rules of Procedure and Evidence shall be transmitted through the Secretary-General.[4]

2. When the Security Council adopts under Chapter VII of the Charter a resolution requesting the Court, pursuant to article 16 of the Statute, not to commence or proceed with an investigation or prosecution, this request shall immediately be transmitted by the Secretary-General to the President of the Court and the Prosecutor.

3. If the Court, pursuant to article 87, paragraph 5 (b) or paragraph 7, of the Statute, decides to inform the Security Council of a failure of cooperation with its requests, or to refer a matter to the Security Council, as the case may be, the Registrar of the Court ("the Registrar") shall convey to the Security Council through the Secretary-General the decision of the Court together with relevant information in the case. The Security Council, through the Secretary-General, shall inform the Court, through the Registrar, of action, if any, taken by it under the circumstances.

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[2] Some delegations suggested the deletion of this paragraph.

[3] Some delegations questioned the appropriateness of articles 4 to 8 for this Agreement.

[4] The retention, content and the placement of the last sentence of this paragraph will be re-examined in the context of the text of article 10.

Article 5
Cooperation between the United Nations and the Prosecutor

1. With due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules and established practice,[5] the United Nations undertakes to cooperate with the Prosecutor and shall[6] enter with the Prosecutor into such arrangements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises, under article 54 of the Rome Statute, his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations in accordance with paragraph 3 (c) of that article.

2. Subject to the rules and established practice[7] of the organ concerned, the United Nations undertakes to cooperate in relation to requests from the Prosecutor in providing such additional information as he or she may seek, in accordance with paragraph 2 of article 15 of the Statute, from organs of the United Nations in connection with investigations initiated *proprio motu* by the Prosecutor pursuant to that article. The Prosecutor shall address a request for such information to the Secretary-General who shall convey it to the presiding officer or other appropriate officer of the organ concerned.

3. The United Nations and the Prosecutor may agree that the United Nations should provide documents or information to the Prosecutor on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or to third parties, at any stage of the proceedings or thereafter, without the consent of the United Nations.

4. The Prosecutor, the United Nations, or its programmes, funds and offices concerned may enter into such arrangements as may be necessary to facilitate their cooperation for the implementation of this article, in particular in order to ensure the confidentiality of information, the protection of any person, including former or current United Nations personnel, and the security or proper conduct of any operation or activity of the United Nations.

Article 6[8] [9]
General provisions regarding cooperation between the United Nations and the Court

1. With due regard to its responsibilities and competence under the Charter and subject to its rules and established practice, the United Nations undertakes to cooperate with the Court and to provide to the Court such information or documents as the Court may request pursuant to paragraph 6 of article 87 of the Statute.

2. The United Nations, or its programmes, funds and offices concerned may enter into agreements or arrangements with the Court, particularly upon the request of the Court, upon the provision of other forms of cooperation and assistance to the Court in conformity with the provisions of the Charter and the Statute.

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[5] Some delegations questioned the need for the retention of these words.
[6] Some delegations preferred to replace the word "shall" with the word "may".
[7] Some delegations questioned the need for the retention of these words.
[8] Some delegations questioned the appropriateness of articles 4 to 8 for this Agreement.
[9] Some delegations suggested placing this article after article 3.

3. In the event that disclosure of information or documents, or the provisions of other forms of cooperation would endanger the safety or security of former personnel of the United Nations or otherwise prejudice the security or proper conduct of any operation or activity of the United Nations, the Court may order, particularly at the request of the United Nations, appropriate measures of protection.[10]

Article 7[11]
Cooperation between the United Nations and the Court in cases of exercise by the Court of its jurisdiction in respect of crimes committed against the personnel, operations and flag of the United Nations

If the Court exercises its jurisdiction in respect of crimes[12] committed against the personnel of the United Nations or which involve the improper use of the flag, insignia or uniform of the United Nations resulting in death or serious personal injury, the Court shall keep the United Nations regularly[13] informed about its proceedings in such cases.

Article 8[14]
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Article 9
Reciprocal representation

1. The Court may attend and participate in the work of the General Assembly of the United Nations in the capacity of observer. The United Nations shall, subject to the rules and practice of the bodies concerned, invite the Court to attend meetings and conferences convened under the auspices of the United Nations, where observers are allowed, and whenever matters of interest to the Court are under discussion.

2. Whenever the Security Council considers matters related to the activities of the Court, the President of the Court or the Prosecutor may address the Council, at its invitation, in order to give assistance with regard to matters within the jurisdiction of the Court.

3. Subject to the applicable provisions of the Rules of Procedure and Evidence and the Rules of the Court, the United Nations shall be invited to attend public meetings of the Court and those public hearings of its Chambers that relate to cases of interest to the Organization.[15]

4. Subject to the rules governing its operation, the Assembly of States Parties shall invite the United Nations to send observers to its meetings whenever matters of interest to the Organization are under discussion.[16]

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[10] Some delegations were of the view that this paragraph went beyond the scope of the Statute.
[11] Some delegations questioned the need for the retention of this article.
[12] Some delegations preferred to insert the word "war" before the word "crimes".
[13] Some delegations suggested the deletion of this word.
[14] The Working Group deferred consideration of this article until the next session of the Preparatory Commission.
[15] Some delegations questioned the need for this paragraph.
[16] Idem.

Article 10
Exchange of information

1. Without prejudice to other provisions of the present Agreement concerning submission of documents and information concerning particular cases before the Court, the United Nations and the Court shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest. In particular:

(a) The Secretary-General of the United Nations shall:

(i) Transmit to the Court information on developments related to the Statute which are relevant to the work of the Court, including information on communications received by the Secretary-General in the capacity of depositary of the Statute or depositary of any other agreements which relate to the exercise by the Court of its jurisdiction;

(ii) Keep the Court informed regarding the implementation of paragraphs 1 and 2 of article 123 of the Statute related to the convening by the Secretary-General of Review Conferences;

(iii) In addition to the requirement provided in paragraph 7 of article 121 of the Statute, circulate to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency which are not parties to the Statute the text of any amendment adopted pursuant to article 121 of the Statute, and the text of communications to the Secretary-General relating to the acceptance of such an amendment;[17]

(b) The Registrar of the Court shall:

(i) Upon the request of the United Nations and in accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation related to pleadings, oral proceedings, orders[18] and judgements;[19]

(ii) Furnish to the United Nations, with the concurrence of the Court and subject to its Statute and rules, any information relating to the work of the Court requested by the International Court of Justice in accordance with its Statute.

2. The United Nations and the Court shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information related to matters of mutual interest. They shall strive to combine, where appropriate, their efforts to secure the greatest possible usefulness and utilization of such information.

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[17] Some delegations questioned the need for this subparagraph.

[18] Some delegations suggested the deletion of this word.

[19] Some delegations suggested that it would be useful to include somewhere in this Agreement a provision dealing with the transmission of information to the United Nations by the Court regarding a request for surrender of any member of United Nations peacekeepers when the Court deems it appropriate.

Article 11
Protection of confidentiality

If the United Nations is requested by the Court to provide information or documentation in its custody, possession or control which was disclosed to it in confidence by a State or an intergovernmental or international organization, the United Nations shall seek the consent of the originator to disclose that information or documentation. If the originator is a State Party to the Statute and the United Nations fails to obtain its consent to disclosure within a reasonable period of time, the United Nations shall inform the Court accordingly and the issue of disclosure shall be resolved between the State Party concerned and the Court in accordance with the Statute. If the originator is not a State Party to the Statute and refuses to consent to disclosure, the United Nations shall inform the Court that it is unable to provide the requested information or documentation because of a pre-existing obligation of confidentiality to the originator.

Article 12[20]
Reports to the United Nations

The Court may, if it deems it appropriate, submit on its activities reports to the United Nations through the Secretary-General.

* * *[21]

Article 13[22]
International Court of Justice

The United Nations and the Court agree that a recommendation for referral to the International Court of Justice under paragraph 2 of article 119 of the Statute which involves a request for an advisory opinion shall be submitted to the General Assembly of the United Nations, which shall decide upon the request in accordance with Article 96 of the Charter.

Article 14
Personnel arrangements

1. The United Nations and the Court agree to consult and cooperate as far as practicable regarding personnel standards, methods and arrangements.

2. The United Nations and the Court agree to:

(a) Periodically consult on matters of mutual interest relating to the employment of their officers and staff, including conditions of service, duration of appointments, classification, salary scale and allowances, retirement and pension rights and staff regulations and rules;

(b) Cooperate in the interchange of personnel;

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[20] Some delegations questioned the need for the retention of this article in view of article 10.

[21] Owing to lack of time, the Working Group did not have time to consider articles 13 to 21 in informal consultations. The Working Group, however, had a brief discussion on article 13 in informal consultations.

[22] Some delegations questioned the need for this article.

(c) Strive for maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services.

Article 15
Administrative cooperation

The United Nations and the Court shall consult, from time to time, concerning the most efficient use of facilities, staff and services with a view to avoiding the establishment and operation of overlapping facilities and services. They may also consult to explore the possibility of establishing common facilities or services in specific areas provided that there are cost savings for both institutions.

Article 16
Conference services and facilities

1. The United Nations agrees that, upon the request of the Court, the United Nations shall, subject to availability and to any arrangement on costs and expenses referred to in paragraph 2 of article 18 of the present Agreement, provide to the Court such facilities and services at United Nations Headquarters as may be required for the meetings of the Assembly of States Parties and of its Bureau, including translation and interpretation services, documentation and conference services.

2. The terms and conditions on which any such facilities or services of the United Nations may be provided to the Court will, where necessary, be the subject of supplementary arrangements concluded for this purpose.

Article 17[23] [24]
Laissez-passer

Without prejudice to the right of the Court to issue its own travel document, and in particular in the absence of any such travel document, the judges, the Prosecutor, the Registrar and other officials of the office of the Prosecutor and the Registry shall be entitled, in accordance with such special arrangements as may be concluded between the Secretary-General of the United Nations and the Court, to use the laissez-passer of the United Nations as a valid travel document[25] where such use is recognized by States Parties to, and in accordance, with the Agreement on the Privileges and Immunities of the International Criminal Court, concluded pursuant to article 48 of the Statute, or other agreements defining the privileges and immunities of the Court.

Article 18
Budgetary and financial matters

1. The United Nations and the Court agree to make separate arrangements governing the conditions according to which funds may be allocated to the Court by a decision of the General Assembly of the United Nations pursuant to articles 115 and 116 of the Statute.

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[23] Some delegations questioned whether this article was necessary. Some delegations also suggested that consideration of this article should be deferred pending the completion of the articles on the privileges and immunities of the Court.

[24] Some delegations suggested that this article should be simplified and shortened.

[25] A suggestion was made to end the article after this word.

2. The United Nations and the Court further agree that the costs and expenses resulting from the cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements between the United Nations and the Court.

3. The United Nations may, upon request of the Court and subject to paragraph 2 of this article, provide advice on financial and fiscal questions of interest to the Court.

Article 19
Implementation of the present Agreement

The Secretary-General of the United Nations and the Court may, for the purpose of implementing the present Agreement, enter into such supplementary arrangements as may be found desirable in the light of the operating experience of the United Nations and the Court.

...[26]

Article 20[27]
Amendments

The present Agreement may be amended by agreement between the United Nations and the Court. Any such amendment agreed upon shall enter into force on its approval by the General Assembly of the United Nations and by the Assembly of States Parties to the Statute in accordance with article 2 of the Statute, on the latter date of the said approvals.

Article 21[28]
Entry into force

The present Agreement shall enter into force on its approval by the General Assembly of the United Nations and by the Assembly of States Parties to the Statute in accordance with article 2 of the Statute, on the latter date of the said approvals.

In witness thereof the undersigned have signed the present Agreement.

Signed this _____ day of _____ at United Nations Headquarters in New York in two copies in all the official languages of the United Nations and the Court.

[26] Some delegations suggested the inclusion of an article for the settlement of disputes between the United Nations and the Court with regard to interpretation and implementation of this Agreement.

[27] Some delegations suggested the inclusion of a paragraph on the provisional application of this Agreement.

[28] Idem.

Appendix

Owing to lack of time, the Working Group deferred consideration of the following proposals to the next session:

Proposals for article 8

Proposal A

If the Court exercises its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and who, pursuant to the provisions of the Convention on the Privileges and Immunities of the United Nations or other agreements concluded by the Organization, enjoys such immunities as are necessary for the independent exercise of his or her work for the Organization, the United Nations undertakes to cooperate with the Court in such a case and shall waive the immunities of the person concerned in accordance with the provisions of the relevant instruments for the purpose of enabling the Court to exercise its jurisdiction.[a]

Proposal B

Paragraph 1 of this article shall be without prejudice to the relevant norms of international law, particularly article 6 of the Convention on the Prevention and Punishment of the Crime of Genocide and article 27 of the Statute, in respect of the crimes that come under the jurisdiction of the Court. (as paragraph 2 to article 8)[b]

Proposal C

If the Court, pursuant to the Rome Statute, exercises its jurisdiction over a natural person who is alleged to be criminally responsible for a crime or crimes within the jurisdiction of the Court and pursuant to the provisions of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, enjoys privileges and immunities in connection with his or her work for the Organization, the United Nations undertakes, for the purpose that the Court exercise its jurisdiction, to cooperate with the Court in such a case or cases and shall waive the privileges and immunities of the person or persons, upon the request of the Court.[c]

Proposals for additional articles

Article 12 (bis). Agenda item[d]

1. The United Nations may propose items for consideration by the Assembly of States Parties. In such cases, the Secretary-General shall notify the President of the Bureau of the Assembly accordingly, providing any relevant information. The President shall include the item in the provisional agenda of the following session of the Assembly or of its Bureau.

[a] PCNICC/2000/WGICC-UN/DP.16.
[b] PCNICC/2000/WGICC-UN/DP.18
[c] PCNICC/2000/WGICC-UN/DP.14.
[d] PCNICC/2000/WGICC-UN/DP.4.

2. The Court may propose items for consideration by the United Nations. In such cases, the Court shall notify the Secretary-General of its proposal and provide any relevant information. The Secretary-General shall submit the proposed item to the General Assembly or the Security Council, and also to any other United Nations body, as appropriate.

Article 18 (bis). Other agreements concluded by the Court[e]

1. Prior to the conclusion of an agreement with a specialized agency or other intergovernmental organization of the United Nations system, the Court shall inform the United Nations of the nature and scope of the agreement and shall subsequently notify the Organization of its conclusion of such agreement.

2. The United Nations and the Court shall consult, when necessary, on the registration by the United Nations of agreements concluded by the Court with States or international organizations.

Additional article

In order to encourage contributions by States to promote international peace and security, and unless there has been a referral to the Court pursuant to article 13 (b) of the Statute, the United Nations and the Court agree that the Court shall determine on its own motion pursuant to article 19 (1) the admissibility of a case in accordance with article 17 when there is a request for the surrender of a suspect who is charged in such case with a crime that occurred outside the territory of the suspect's State of nationality.[f]

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[e] PCNICC/2000/WGICC-UN/DP.7.
[f] PCNICC/2000/WGICC-UN/DP.17.